IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5617 of 1986

with

SPECIAL CIVIL APPLICATION No 5618 of 1986

with

SPECIAL CIVIL APPLICATION NO. 708 OF 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.G.BALAKRISHNAN
and
MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

LATABEN S SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5617 of 1986
MR SK JHAVERI for KS JHAVERI for Petitioners
MR MA BUKHARI, A.G.P. for Respondents No. 1 to 3
MR JD AJMERA for Respondent No. 4

2. Special Civil Application No 5618 of 1986
MR SK JHAVERI for KS JHAVERI for Petitioners

MR MA BUKHARI, A.G.P. for Respondents No. 1 to 3
MR JD AJMERA for Respondent No. 4

3. Special Civil Application no. 708 of 1988
MR SK JHAVERI for KS JHAVERI for petitioners
MR MA BUKHARI, A.G.P. for respondents no.1 to 3
MR JD AJMERA for respondent no.4.

CORAM : MR.JUSTICE K.G.BALAKRISHNAN and
MR.JUSTICE J.M.PANCHAL
Date of decision: 06/02/98

ORAL JUDGEMENT

(Per : Panchal,J.):-

By means of filing these petitions under Article 226 of the Constitution, the petitioners have prayed to quash and set aside notification dated March 18, 1983 issued by the State of Gujarat under section 4(1) of the Land Acquisition Act, 1894 ("Act" for short) in relation to land admeasuring 10117 sq.ft. out of survey no. 1125 situated in Palanpur City, District : Banaskantha for construction of Telephone Exchange and Staff Quarters. The petitioners have also urged to quash and set aside declaration dated March 25, 1985 made by the Government of Gujarat under section 6 of the Act to the effect that lands specified therein are needed at the public expenses for the purpose of construction of Telephone Exchange and staff quarters in Palanpur City. The petitioners have further petitioned to quash and set aside notice dated June 10, 1986 issued by the competent authority under section 9 of the Act calling upon the interested parties to declare nature/kind of interest they have in the lands mentioned in declaration made under section 6 of the Act and for claiming compensation pertaining to damages therefor. The petitioners have besides pressed to restrain the respondents from proceeding further consequent upon notification issued under section 4 of the Act as well as declaration made under section 6 of the Act and notice issued under section 9 of the Act and also from taking possession of the lands of the petitioners covered by declaration made under section 6 of the Act. As common questions of facts and law are raised in the present three petitions, we propose to

dispose of them by this common judgment.

2. By Government of India Notification, Ministry of Food, Agriculture Community Development and Co.operation No.4/1/65m Gen.II, dated 23.4.1966 issued under Clause (1) of Article 258 of the Constitution of India, the functions of the Central Government under the Land Acquisition Act, 1894 (1 of 1894) in relation to the acquisition of land for the purpose of the Union within the territory of the State of Gujarat have been entrusted to the Government of Gujarat. It appeared to the Government of Gujarat that land approximately admeasuring 10117 sq.mts. out of survey no.1125 ,situated in Palanpur city, District : Banaskantha was likely to be needed for public purpose i.e. for construction of Telephone Exchange and staff quarters. The Government of Gujarat, therefore,issued notification under section 4(1) of the Act making it public that land approximately admeasuring 10117 sq.mts. out of survey no.1125 situated in Palanpur city was likely to be needed for the purpose of construction of Telephone Exchange and staff quarters. The Government of Gujarat had appointed Deputy Collector Palanpur to perform the functions of the Collector under the Act with reference to the lands in question. The notification issued by the Government of Gujarat under section 4(1) of the Act is produced by the petitioners at Annexure-A to the petition. On publication of notification as required by section 4(1) of the Act, the petitioners of Special Civil Application no. 5618/86 and Special Civil Application no. 708/88 lodged objections with the Deputy Collector, Palanpur. The Deputy Collector,Palanpur considered the objections and other relevant materials and thereafter submitted report as contemplated by sub-section (2) of Section 5-A of the Act to the Government. After considering the report of Deputy Collector, Government of Gujarat made declaration under section 6 of the Act to the effect that the lands specified therein are needed for the public purpose of construction of Telephone Exchange and staff quarters. The declaration made by the Government of Gujarat under section 6 of the Act is produced by the petitioners at Annexure-B to the petition. The Deputy Collector,Palanpur issued notice dated June 10, 1986 to the interested persons calling upon them to declare the nature/kind of interest they have in the lands regarding which declaration under section 6 was made and for claiming compensation pertaining to the damages therefor. The notice issued by the competent authority is produced by the petitioners at Annexure-C to the petition. The petitioners have averred that acquisition of lands as per notification Exhs. A and B is for the purpose of

Telephone Exchange and staff quarters for their employees which is the purpose of Union of India and as notification contemplated by section 4 of the Act is not issued by the Central Government, the same is liable to be set aside. It is pleaded that no notification under Article 258(1) of the Constitution could have been issued for entrustment to the State Government of the duties and functions of the Central Government under the Land Acquisition Act, 1894 in view of the fact that Parliament by legislation requires those functions to be carried out by the Central Government and, therefore, notification produced at Exh.A and declaration produced at Exh.B are invalid. What is claimed in the petition is that without authority of law as contemplated by Article 300A of the Constitution, properties of the petitioners are sought to be deprived and, therefore, the reliefs claimed in the petitions should be granted. It is asserted that though approximate area of the land required was specified in the notification issued under section 4 of the Act, while making declaration under section 6 of the Act, the Government of Gujarat had included additional area of the land which was not covered by the notification issued under section 4 of the Act and without issuance of fresh notification under section 4 of the Act, parts of the land not covered by notification under section 4(1)of the Act could have been acquired by making declaration under section 6 of the Act. It is claimed in the petition that notification issued under section 4 of the Act is too vague and, therefore, entire acquisition proceedings are bad in law. It is also averred in the petition that the then Collector had personal bias against the petitioners, as order passed by him under section 65 of the Bombay Land Revenue Code was set aside by the Government in revision at the instance of the petitioners and as powers to acquire lands have been exercised malafide, the petitions should be accepted. It is pleaded that survey no.600 situated in the City of Palanpur as well as other lands were available for construction of Telephone Exchange and staff quarters, but as alternative suitable lands are not acquired, the notification issued under section 4 as well as declaration made under section 6 should be set aside. It is claimed in the petition that on earlier two occasions Government had turned down proposal to acquire part of survey no.1125 situated in Palanpur City for this very purpose and as survey no.600 which is similarly situated is not acquired the Government of Gujarat has adopted policy of pick and choose and therefore, the impugned notification should be struck down. It is also highlighted in the petition that the purpose for which acquisition is made, no longer survives and, therefore, the impugned notifications

should be quashed. Under the circumstances, the petitioners have filed present petitionsand claimed reliefs to which reference is made earlier.

3. Mr. M.F.Parmar, Deputy Collector, Palanpur has filed affidavit-in-reply controverting the averments made in the petition. The petitioner no.2 of Special Civil Application no. 5617/86 has filed affidavit-in-rejoinder reiterating what is stated in the petition and has also got filed affidavit of one Babubhai M.Prajapati in support of averments made in the affidavit in rejoinder. Mr. M.S.Patel, Deputy Collector,Palanpur has filed further affidavit-in-reply on September 10, 1996. Similarly, Mr. A.K.Patel, S.D.E. (Admn.) has filed affidavit-in-reply on behalf of respondent no.4 mentioning that the purpose for which lands are acquired, subsists even today and the lands are needed for Telephone Exchange as well as staff quarters.

4. Mr. S.K. Zaveri,learned Counsel for the petitioners submitted that acquisition of lands as per notification Exh.A and declaration Exh.B is for the purpose of Telephone Exchange and staff quarters for their employees which is a purpose of Union of India and, therefore, no notification as contemplated by section 4 of the Act having been issued by the Central Government, the impugned notification should be set aside. It was pleaded that Article 258(1) of the Constitution cannot be brought in aid for the purpose of entrustment to the State Government the duties and functions of the Central Government under the Land Acquisition Act, 1894 in view of the fact that Parliament by legislation requires those functions to be performed by the Central Government and, therefore, notification produced at Annexure-A to the petition and declaration produced at Annexure-B to the petition are invalid and beyond the scope and authority of the State Government. What was stressed by the learned Counsel for the petitioners was that Article 300A of the Constitution provides that no person shall be deprived of his property save by authority of law and as notification issued under Article 258(1) of the Constitution cannot be regarded as authority of law, prayers made in the petition should be granted. In support of this plea, learned Counsel placed reliance on the decisions rendered in (1) M/s. Bishamber Dayal Chandra Mohan etc. etc. vs. State of U.P. and others etc.etc., AIR 1982 SC 33, (2) Jilubhai Nanbhai Khachar etc. etc. vs. State of Gujarat and another etc. etc. AIR 1995 SC 142.

5. Mr. M.A.Bukhari, learned Assistant Government

Pleader appearing for the Government of Gujarat and Mr. J.D.Ajmera, learned Standing Counsel for Central Government submitted that functions of the Central Government under the Land Acquisition Act, 1894 in relation to acquisition of land for the purpose of the Union within the territory of the State of Gujarat have been entrusted to the Government of Gujarat and as notification under section 4 of the Act has been issued pursuant to entrustment of functions of the Central Government vide notification dated April 23, 1966 issued under clause (1) of Article 258 of the Constitution, said notification is not liable to be set aside. It was pleaded that notification issued under Article 258(1) of the Act is having force of law and, therefore, it is not correct to contend that without authority of law, properties of the petitioners are sought to be deprived. It was also claimed that as Item no.42 dealing with acquisition and requisition of property has been inserted in List-III of Seventh Schedule, the Government of Gujarat is competent to acquire land, both for the State purpose as well as for the purpose of Union and, therefore, even if there is no entrustment by Central Government of its powers to acquire the property, that would not invalidate either the notification issued under section 4 or the declaration made under section 6 of the Act. In support of their submissions,learned Counsel placed reliance on the decision rendered in (1) Jayantilal Amratlal Shodhan vs. F.N.Rana and others, A.I.R. 1964 S.C. 648, and (2) Mrs. Roma Bose and others vs. Union of India and others, A.I.R. 1978 Calcutta, 584.

6. In view of the rival submissions advanced at the bar, it would be relevant to notice certain provisions of the Act. Section 3(ee) defines the expression "appropriate Government" and provides that expression "appropriate Government" means in relation to acquisition of land for the purposes of the Union, the Central Government, and in relation to acquisition of land for any other purposes, the State Government. Section 4(1) of the Act enables the appropriate Government to publish a notification in the Official Gazette if it appears to it that land in any locality is needed or is likely to be needed for any public purpose. It inter-alia provides that the notification has to be published in the official Gazette and in two daily newspapers circulating in that locality of which at least one should be in the regional language. Reading section 4(1) with the provisions of Section 3(ee) of the Act, there is no manner of doubt that in relation to acquisition of land for the purpose of the Union, the Central Government can issue

notification as contemplated by section 4(1) of the Act; whereas in relation to acquisition of land for any other purposes, State Government can issue notification under section 4(1) of the Act. However, Article 258(1) of the Constitution makes provision regarding conferment of powers etc. of the Union on the States in certain cases. Article 258(1) which is relevant for our purpose reads as under :

> "258. Power of the Union to confer powers etc. on States in certain cases- (1) Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends."

This provision enables President to entrust to State Government functions which are vested in Union and not those which are vested in him as President. Article 258(1) enables President to exercise, by notification, the power which the legislature could exercise by legislation, to entrust functions in relation to any matter to which executive power of the Union extends, to the officers specified in the notification and subject to conditions prescribed therein. When delegation of executive function by Central Government to State Government is with the consent of the Government of a State, it is valid delegation notwithstanding absence of provision of delegation in the Act concerned. Provisions of Article 258(1) override those relating to distribution of executive powers under Articles 73 and 162 of the Constitution. In the case of M/s. Bishamber Dayal Chandra Mohan (supra) writ petitions were filed by wholesale dealers of foodgrains from the Union Territory of Delhi and the States of Punjab and Haryana seeking a declaration that the action of the State Government of Uttar Pradesh in setting up check-posts on the borders of the State and directing seizure of wheat in transit through States conflicted with the guarantees of inter-State trade and commerce dealt with by Article 301 of the Constitution. The questions as to the scope and extent of executive power of the State under Article 162 of the Constitution, in relation to regulation and control of trade and commerce in foodstuffs were raised before the Apex Court in a batch of petitions which were filed under Article 32 of the Constitution. The claim of the wholesale dealers of foodgrains was that the exercise of such governmental power conficted with the rule of law and in flagrant violation of the freedom of trade,

commerce and intercourse guaranteed under Article 301 of the Constitution and the fundamental right to carry on trade and business guaranteed under Article 19(1)(g) of the Constitution. While dealing with executive power of State under Article 162, the Supreme Court has observed as under :-

> "The State Government cannot while taking recourse to the executive power of the State under Article 162 deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. Article 162, as is clear from the opening words, is subject to other provisions of the Constitution. It is, therefore, necessarily subject to Article 300A. The word "law" in the context of Article 300A must mean an Act of Parliament or of a State Legislature, a rule, or a statutory order, having the force of law, that is positive or State-made law. The effect of the Constitution (Fourth) Amendment Act, 1955,is that there can be no "deprivation" unless there is extinction of the right to property."

7. In the case of Jilubhai Nanbhai Khachar (supra) the Supreme Court considered constitutionality of the Bombay Land Revenue Code and Land Tenure Abolition Laws (Gujarat Amendment) Act (8 of 1982). Under the relevant provisions of the said Act, there was extinguishment of pre-existing rights, title and interest in the land including mines, minerals and quarries held by Girasdar and Barkhalidars. While construing Article 300A of the Constitution, the Supreme Court has observed that the word "law" used in Article 300A must be an Act of Parliament or of State Legislature, a rule or statutory order having force of law and the deprivation of the property must be only by authority of law, be it an Act of Parliament or State Legislature, but not by executive fiat or an order. What is emphasised by the Supreme Courst is that deprivation of property is by acquisition or requisition and if owner is deprived of property by acquisition or requisition, there is no deprivation without any sanction of law. The Supreme Court has emphasised that deprivation by any other mode is not acquisition or taking possession under Article 300A of the Constitution.

8. From the above-referred to two decisions of the Supreme Court,it becomes evident that deprivation of properpty cannot be without any authority of law and word "law" used in ARticle 300A is an Act of Parliament or of

State Legislature, a rule or statutory order having force of law. In the light of principles enunciated by the Supreme Court in the above-referred to two decisions, the question whether notification issued under Article 258(1) of the Constitution is "authority of law" within the meaning of Article 300A of the Constitution,will have to be considered. At this stage, we may refer to the provisions of (The) State Acquisition of Lands for Union Purposes (Validation) Act, 1954. The above-referred to Act was enacted by the Parliament to validate the acquisition under the Land Acquisition Act, 1894 of lands by certain State Governments forthe purposes of the Union, and orders passed and proceedings held in connectioin therewith. Section 9(2) of the said Act provides as under :-

"2. Validation of certain acquisitions of land and proceedings and orders connected therewith.Every acquisition of land for the purposes of the Union made by any State Government acting or purporting to act under the Land Acquisition Act, 1894, at any time during the period beginning with the commencement of the Constitution and ending with the day on which the State Government was entrusted with the functions of the Central Government in relation to the acquisition of land for the purposes of the Union in pursuance of clause (1) of article 258 of the Constitution, and every proceeding held and order made during the said period in connection with the acquisition of land for any such purposes, shall be deemed to be, and always to have been, as valid as if the State Government had been duly entrusted with the said functions of the Central Government during the said period,and accordingly no acquisition somade, and no proceeding held andno order passed by any authority under the said Act in connection with any acquisition of land during the said period, shall be called in question merely on the ground that the State Government was not duly entrusted with the functions of the Central Government at the time the acquisitioin was made or the proceedings was held or the order was made."

A bare reading of section 2 makes it abundantly clear that acquisition of land by the Central Government for its own purposes is one of its functions and that function can be entrusted to the State Government by issuing notification under Clause (1) of Article 258 of

the Constitution. There is no manner of doubt that while issuing notification under Article 258(1) of the Constitution,the Central Government confers its authority of law on the State Government to acquire land subject to certain conditions which may be stipulated in the notification. Therefore, State Government exercising powers in pursuance of notification issued under clause (1) of Article 258 of the Constitution will be acting with authority of law if it acquires any land for the purpose of Central Government. In our view, the point which is sought to be raised by the learned Counsel for the petitioners in the petitions is squarely covered by the decision of Supreme Court in the case of Jayantilal Amratlal Shodhan (supra). In the said case, the facts were that in exercise of the powers conferred by Art.258 of the Constitution the President of India on July 24,1959 had issued a notification entrusting with the consent of the State Government of Bombay, to the Commissioners of Divisions in the State of Bombay, the functions of the Central Government under the Land Acquisition Act 1 of 1894, in relation to acquistion of land for the purpose of Union within the limits of the territorial jurisdiction of the said Commissioners subject to the same control by the Government of Bombay as was from time to time exercisable by that Government in relation to acquisition of land for the purpose of the State. At the date of the notification the territory which later formed the State of Gujarat and in which the land in dispute was situate was part of the State of Bombay, but on May 1, 1960,-- called the appointed day-as a result of the reorganisation ofthe State of Bombay under the Bombay Reorganisation Act, 1960, out of the territory of that State, two States were carved out-- the State of Maharashtra and the State of Gujarat, and the territory covering the Baroda Division was allotted to the State of Gujarat. By the notification in question only "the functions of the Central Government under the Land Acquisition Act 1 of 1894, in relation to acquisition of land for the purpose of the Union" had been entrusted to the Commissioners of Divisions. The power exercisable by the appropriate Government under S. 55 of the Land Acquisition Act to frame Rules under the Act had not been entrusted to the Commissioner.By notification published on September 1, 1960 under S. 4(1) of the Land Acquisition Act 1 of 1894, the Commissioner, Baroda Division, State of Gujarat, exercising functions entrusted to him under the notification dated July 24, 1959 issued by the President, under Art. 258(1) of the Constitution had notified that a piece of land belonging to the appellant was likely to be needed for a public purpose viz. construction of a

Telephone Exchange Building in Ellis Bridge, Ahmedabad. Notice was thereafter served by the Additional Special Land Acquisition Officer, Ahmedabad (who was appointed by the order of the Commissioner to perform the functions of a Collector), upon the appellant under S. 5A of the Land Acquisition Act inviting objections to the acquisition of the land. The appellant had filed objections to the proposed acquisition. The Additional Special Land Acquisition Officer had submitted his report to the Commissioner, who issued a notification dated January 11, 1961, under S. 6(1) of the Land Acquisition Act, declaring that the land notified under the earlier notification was required for the public purpose and that the Additional Special Land Acquisition Officer, Ahmedabad, was appointed under cl.(e) of S.3 to perform the functions of the Collector for all proceedings to be taken in respect of the land and to take order under S.7 of the Act for acquisition of the land. Before the date of the notification issued by the Commissioner, Baroda Division, who was then functioning as an officer of the State of Gujarat, under S.4 of the Land Acquisition Act no order expressly entrusting the functions of the Union Government under the Land Acquisition Act to any officer in the State of Gujarat was issued by the President and the authority of the Commissioner to notify for acquisition of the land of the appellant was sought to be derived solely from Ss. 82 and 87 of the Bombay Reorganisation Act.

9. The Supreme Court has considered scope and ambit of Article 258(1) of the Constitution and ruled as under :-

> "The President is indisputably the executive head of the Union, but it cannot be assumed on that account that the exercise of power by him under Art. 258(1) cannot have the effect of law within the meaning of S.87 of the Bombay Reorganisation Act. By the notification dated July 24, 1959, issued by the President, power was entrusted to the Commissioner, Baroda Division, in respect of matters relating to acquisition of land under the Land Acquisition Act, 1894. By item 42 List III the subject of acquisitioin of property falls within the Concurrent List and the Union Parliament has power to legislate in respect of acquisitioin of property for the purpose of the Union, and by virtue of Art.73(1)(a) the executive power of the Union extends to the

acquisition of property for the Union. By Art. 298 of the Constitution the executive power of the Union extends to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The expression "acquisition, holding and disposal of property" would include compulsory acquisition of property. That is a provision in the Constitution which within the meaning of the proviso to Art. 73(1) expressly provides that the Parliament may acquire property for the Union and consequently executive power of the Union in relation to compulsory acquisition of property is saved thereby, power of the State to acquire land notwithstanding. The effect of Art. 258(1) is merely to make a blanket provision enabling the President by notification to exercise the power which the Legislature could exercise by legislation, to entrust functions to the officers to be specified in that behalf by the President and subject to the conditions prescribed thereby. By entrustment of powers under the statute,the notification merely authories the State or an officer of the State in the circumstances and within the limits prescribed to exercise the specified functions. Effect of the Presidential notification is that, wherever the expressioin "appropriate Government" occurs inthe Land Acquisition Act in relation to provisions for acquisition of land for the purposes of the Union, the words "appropriate Government or the Commissioner of the Division having territorial jurisdiction over the area in which the land is situate", were deemed to be substituted.In other words, by the issue of the Presidential notification, the Land Acquisition Act must be deemed pro tanto amended. Such an amendment must be regarded as having the force of law. The notification issued by the President conferring authority upon the Commissioner to exercise the powers of the appropriate Government in the matter of land acquisition under the Land Acquisition Act had the force of law because even though issued by an executive authority, the Courts were, if challenged, bound to recognise and give effect to the authority conferred by the notification. This is not to say that every order issued by an executive authority has the force of law. If the order is purely administrative, or is not issued in exercise of any statutory authority,it may not have the force

> of law. But where a general order is issued even by an executive authority which confers power exercisably under a statute, and which thereby in substance modifies or adds to the statute, such conferment of powers must be regarded as having the force of law."

10. Thus, the Supreme Court has ruled that the effect of Article 258(1) is merely to make blanket provision enabling the President by notification to exercise the power which the Legilature could exercise by legislation to entrust functions of the Union to the officers to be specified in that behalf by the President and subject to the conditions prescribed thereby. What is emphasised by the Apex Court is that by entrustment of powers under the statute, the notification merely authorises the State or an officer of the State in the circumstances and within the limits prescribed to exercise the specified functions and effect of the Presidential notification is that wherever the expression "appropriate Government" occurs in the Act in relation to provisions for acquisition of land for the purpose of the Union, the words "appropriate Government or the Commissioner of the Division having territorial jurisdiction over the area in which the land is situate", were deemed to be substituted. The Supreme Court has clearly pronounced that "in other words, by the issue of Presidential notification, the Land Acquisition Act must be deemed pro tanto amended and it would be difficult to regard such an amendment as not having the force of law". Considered in the light of principles laid down by the Supreme Court in the case of JAYANTILAL AMRATLAL (Supra), the effect of Presidential notification dated April 23, 1966 is that wherever the expression "appropriate Goverenment" occurs in the Act in relation to provisioins for acquisition of land for the purpose of the Union, the words "appropriate Government or the State of Gujarat" must be deemed to have been substituted. Under the circumstances, issuance of notification issued by the State Government under section 4 of the Act has force of law and it cannot be said that petitioners are deprived of their lands without authority of law which is contemplated in Article 300A of the Constitution. Therefore, neither the notification issued under section 4 of the Act nor declaration made under section 6 of the Act can be set aside on the ground that property of the petitioners are sought to be deprived by the State Government without authority of law. The first submission advanced on behalf of the petitioners, therefore, cannot be accepted and is hereby rejected.

11. We will now proceed to consider second submission advanced on behalf of the petitioners namely that the declaration made under section 6 of the Act should be set aside, as some lands are excluded, whereas lands other than the lands which were specified in the notification issued under Section 4 of the Act are included in the declaration made under section 6 of the Act without issuance of another fresh notification under section 4(1) of the Act. The contention of the petitioners is that the notification under section 4 of the Act was issued whereby approximate area of the land proposed to be acquired was mentioned to be 10117 sq.ms, but after receipt of report under section 5A(2) of the Act, some areas of the land were excluded, whereas others were included in the declaration made under section 6 of the Act regarding which some of the petitioners had no opportunity to file objections as contemplated by section 5A of the Act and, therefore, declaration made under section 6 should be held to be illegal. In order to appreciate this plea canvassed on behalf of the petitioners, it would be relevant to notice the scheme contemplated by sections 4, 5A and 6 of the Act. The publication of a notification under section 4(1) is compulsory in all cases of acquisition of land under the Act. Such a notification serves two purposes. It is public announcement on behalf of the appropriate government that land is needed or likely to be needed for acquisition, in any locality and it gives legal authority to the departmental officers or the officers of a local authority or company authority for whose purpose the land is needed to survey and do other acts by entering upon lands as may be necessary for the preliminary investigation to ascertain what lands are suitable and may have to be taken. This is usually called reconnaissance survey. Such a preliminary investigation may be necessary to fix site for drainage, canal etc. In some cases, such a preliminary investigation may not be necessary and it may be possible to state what land exactly is needed without such investigation. Section 4(1) provides for both the cases by stating that "whenever it appears to the appropriate government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulatingin that locality". The object of notificatioin under section 4 is to give public notice that it is proposed to acquire land mentioned in the notification and any one interested can lodge objections. The scheme of section 4 is that after the steps contemplated under section 4(1) have been taken, the officers authorised by Government can do various acts

set out in sub-section (2). A notification under section 4 is merely an introductory measure. It is tentative in its nature and there is no finality or immutability about it. It is of an exploratory character and it does not proprio motu, result in acquisition. Notification under section 4(1) need not specify the precise area within which lands are proposed to be acquired. What section 4(1) requires is that a notification should mention the "locality" within which the land proposed to be acquired, lies. The term locality being rather vague, vaguness is necessarily implicit in contemplated notice and therefore, the land need not be defined and identified for that is done subsequently by initiating proceedings under sections 4(2), 5A read with final declaration made under section 6 of the Act. The purpose of notification is to give intimation to the people concerned that their lands may be acquired andif they want to,they may raise objection. Therefore, notification under section 4 need not specify boundaries or other particulars of land to be acquired. Vagueness as to specification or identification of land under section 4, but not in declaration under sectioin 6 does not vitiate land acquisition proceedings. Where after the notification issued under section 4,persons interested have filed objections under section 5A before Collector, it cannot be said that they were in any manner misled by the absence of proper description of land in the notification issued under section 4. Under section 6 it is the particular lands that should be specified in the declaration in the light of report submitted by the competent authority under section 5A(2) of the Act. Declaration under section 6 has to be made having regard to suitability and adaptability of the lands with reference to public purpose and this exercise is bound to result into exclusion and inclusion of part of land covered by section 4(1) notification. It is not at all essential that area of the land sought to be acquired whether approximate or precise should be an essential component of section 4(1) notification in shch a manner as to inhibit the acquiring authorities from subsequently proceeding to acquire another part or a large area of that very land in that acquisition itself. The fact that subsequent declaration under section 6 fixed the area inclusive of some more land in the same survey number cannot invalidate the acquisition or render it essential that another notification under section 4(1) should be issued for the alleged additional area. All that is required is that declaration under section 6 should be with reference to land mentioned in preliminary notification issued under section 4(1) of the Act. Notification under section 4(1) need not precisely define

the nature of the land proposed to be acquired or the persons to whom it is considered to belong. However, there should be a clear indication in the notification under section 4(1) of the Act about the land which is proposed to be acquired from which owners or occupiers of the land can get a fair idea as to the details or the acquisition and impact on their right.

12. If viewed in the light of the above-referred to principles , it becomes evident that while issuing notification under section 4 of the Act, the intention of the Government to acquire 10117 sq.mts of land out of survey no.1125, was made clear. It was made clear to one and all who had interest in survey no.1125 that Government wanted to acquire 10117 sq.mts of land out of the said survey number. After publication of notice in the Gazette andin the daily newspapers as required by section 4(1) of the Act, the owners as well as most of the petitioners to whom lands were sold by the erstwhile owners,had filed their objections under section 5A of the Act. Those objections were considered by the competent authority and thereafter report was made by the competent authority under section 5A(2) of the Act, to the State Government indicating suitability and adaptability of the lands to be acquired. The report made by the competent authority was considered by the Government and thereafter decision to acquire lands as specified in declaration made under section 6 of the Act was taken. By making declaration under section 6 of the Act, appropriate Government has decided to acquire 10117 sq.mts. of land out of survey no.1125 of Palanpur city, District : Banaskantha and no additional lands are sought to be acquired at all. Though it was not essential at all that the area of the land sought to be acquired whether approximate or precise should have been specified in the notification issued under section 4 of the Act, it was indicated in the notification issued under section 4 of the Act that approximately 10117 sq.mts. of area was likely to be needed for public purposes out of survey no.1125 situated in Palanpur city. As observed earlier, it is not at all essential that the area of the land sought to be acquired whether approximate or precise should be an esential component of section 4(1) notification in such a manner as to inhibit the acquiring authorities from subsequently proceeding to exclude or include additional or large area in that acquisition itself. The subsequent declaration under section 6 as such has not fixed area which was not subject matter of notification issued under section 4 of the Act. The fact that subsequent declaration made under section 6 fixed the area inclusive of some more land in the same survey

number cannot invalidate the acquisition or render it esential that another notification under section 4(1) should be issued for the alleged additional area. In order to substantiate the claim that regarding additional area of the land mentioned in declaration made under section 6 of the Act, issuance of notification under section 4 of the Act is essential, learned Counsel placed reliance on the decision of Supreme Court rendered in The State of Madhya Pradesh and others vs. Vishnu Prasad Sharma and others, A.I.R. 1966 S.C. 1593 . In that case, on May 16, 1949, a notification was issued under section 4(1) of the Act by which it was declared that lands in eleven villages including village Chhawani were likely to be needed for a public purpose i.e. the erection of an iron and steel plant. Thereafter notifications were issued under section 6 with respect to the villages notified in the notification under section 4(1). A number of such declarations under section 6 were made with respect to village Chhawani and some land in that village was acquired under those notifications, the last of such acquisitions being in the year 1956. Thereafter on August 12, 1960 another notification under section 6 of the Act was issued by the appropriate government proposing to acquire 486.17 acres of land in village Chhawani and the area which was proposed to be acquired was demarcated on a map kept in the office of the Collector of Durg for inspection. It was stated in the notification that the provisions of section 5A of the Act were not to apply thereto. Thereupon the respondents who were interested in some of the lands notified, had filed a writ petition in the High Court challening validity of notification under section 6. The principal contention raised on their behalf was that notification under section 6 of the Act was void , as it had not been preceded by a fresh notification under section 4(1) and the notification under section 4(1) issued in 1949 had exhausted itself when notifications under section 6 with respect to that village had been issued previously.In substance, contention of the respondents was that notification under section 4(1) could be followed only by one notification under section 6 and there could be no successive notifications under section 6 with respectto lands comprised in one notification under section 4(1). The contention of the respondents was accepted by the High Court. With certificate of fitness under Articles 132(1) and 133(1)(c) of the Constitution granted by the High Court, the appellant had approached the Supreme Court. In the light of the above-referred to facts, the Supreme Court held that there was nothing to suggest that section 4(1) was a kind of reservoir from which the government might from time to time draw out land and make

declarations with respect to it successively and if that was the intention behind sections 4, 5-A and 6, some indication would have been found in the language used therein. What was laid down by the Supreme Court was that notification under section 4 specified the locality and followed by making up of its mind by the appropriate Government what particular land out of that locality it needed, but once locality was particularised, notification under section 4(1) having served its purpose exhausted itself and thereafter no further declaration under section 6 of the Act could be made with reference to remaining non-particularised area by the Government. In our opinion, this decision is of no assistance to the petitioners. The above decisionof the Supreme Court had the effect of upsetting a large number of proceedings for land acquisition for various public purposes througout the country as in most cases of bigger projects, acquistion was done in stages consistent with the requirements ofthe situation and a single notification under section 4(1) had been followed with more than one declaration under section 6 of the Act. It was not possible to reopen all such cases and to start proceedings afresh as it would have seriously affected and dislocated projects for which land had been acquired.

Consequently, to overcome the adverse effect of the Supreme Court judgment and in view of urgency of the situation affecting many important projects, the Land Acquisition Act, 1894, was amended with retrospective effect by the promulgation of the Land Acquisition (Amendment of Validation) Ordinance, 1967 on the 20th January, 1967 to provide for submission of either one report in respect of the land which has been notified under section 4(1) or different reports in respect of different parcels of such land, to the appropriate government, containing the recommendations of the Collector on the objections submitted by the interested persons under section 5A(1) of the Act, to the acquisition of the land covered by the notification under section 4(1) or of any land in the locality, as the case may be. Section 6 of the Act as amended by section 3 of the Land Acquisition (Amendment and Validation) Act, 1967 specifically provides that, if necessary, more than one declaration may be issued from time to time in respect of different parcels of any land covered by the same notification under section 4(1) of the Act irrespective of the fact whether one report or different reports has or have been made under section 5A(2) of the Act. Thus, in view of amendment of section 6 of the Act, the Supreme Court judgment in case of State of Madhya Pradesh (supra) can no longer be pressed into service. Even otherwise,

it is not indicated in the present case that after particularisation of land as contemplated by declaration under section 6 of the Act, another notification is issued for the lands which were covered and not particularised. Section 4 notification was issued with reference to survey no.1125 paiki situated in Palanpur city; whereas section 6 declaration is also made with reference to survey no.1125 paiki situated in Palanpur city. The measurement of the lands is same in both the notifications. In the declaration which was made under section 6 of the Act, lands have been particularised by the plot numbers, measurement etc. and thereafter no further declaration has been made by the State Government. Under the circumstances, it was not necessary at all for the appropriate Government to issue another notification under section 4 of the Act. When declaration made under section 6 fixed the area inclusive of some more land of very said survey number, requirement of law that declaration under section 6 should be with reference to lands mentioned in preliminary notification issued under section 4 of the Act is fully met with. The learned Counsel for the petitioners has cited certain authorities to emphasis that declaration made under section 6 of the Act is not severable and, therefore, the same as a whole should be set aside. As we have come to the conclusion that it was not necessary for State Government to issue another notification under section 4 of the Act regarding additional area of the land while making declaration under section 6 of the Act, we are of the opinion that it is not necessary to refer to those decisions in detail. Therefore, the second contention advanced for challenging declaration made under section 6 of the Act has also no substance and fails.

13. The next contention that notification issued under section 4 of the Act is too vague and, therefore, it should be set aside is devoid of merits. Section 4(1) of the Act requires that locality in which land sought to be acquired lies should be specified and the public purpose should be indicated. In the present cases, locality namely, Palanpur City, Palanpur, Banaskantha is specifically mentioned in the notification issued under section 4 of the Act. The description of the land i.e. survey no.1125 paiki is also mentioned in the notification. It is further indicated in the notification that approximate area of the land required out of survey no.1125 for public purpose is 10117 sq.mts. The public purpose for which the land specified in the Schedule was likely to be needed is also mentioned in the said notification i.e. for construction of Telephone Exchange and staff quarters. Thus, we do not find that

notification issued under section 4 of the Act is vague in any manner whatsoever. All the relevant particulars required to be mentioned by law are mentioned therein. In fact, it is not the requirement of law that notification should precisely define the nature of the land to be acquired and the persons to whom it is considered to belong. However, in the present case, not only the locality is specified, but survey number and approximate area of the land required for public purpose is also indicated. The purpose of notification to be issued under section 4 of the Act is to give a fair idea to the owners or occupiers as to the details of acquisition and impact on their rights. The notification in question gives a fair idea as to the details of acquisition and impact on the rights of owners and occupiers so far as survey no.1125 situated at Palanpur city is concerned. Under the circumstances, notification cannot be set aside on the ground that it is vague. Learned Counsel for the petitioners placed reliance on the decision in the case of Smt. Gunwant Kaur & others vs. Municipal Committee, Bhatinda and others, AIR 1970 S.C. 802 in support of his plea that the notification issued under section 4 of the Act is liable to be set aside, as it is vague. In our view, the said decision is not applicable to the facts of the present case and, therefore, of no help to the petitioners. In the said case, 3rd appellant had purchased a plot of land approximately 500 sq.yards at Bhatinda and applied for permission of local Municipal Committee to construct a house on that plot. Sanction was granted and a residential building was constructed by the 3rd appellant. The first appellant had also purchased 500 sq.yards of land from the original owner and submitted an application with plans to the Municipal Committee for constructing a house which was granted by the Municipal Committee. The 2nd appellant had purchased land adjacent to the land of appellant no.1 and had applied for constructing structure which was sanctioned by the local Municipal Committee. A notification had been issued by the State Government of Punjab under section 4 of the Land Acquisition Act declaring that the land specified in the Schedule to the notification was needed for public purpose i.e. for construction of Mall Road leading from the Railway Station, Bhatinda to the main road. In the Schedule to the notification, the land was described as Khasra no.2030. 11 sets of persons were shown as owners of different pieces of land. The aggregate area of the land likely to be needed was shown as 15 bighas and 5 biswas. Hari Ram from whom the appellant had purchased piece of land, was shown as owner of two pieces out of the land. By an amendment of the notification, holdidng

of Hari Ram was shown in the aggregate as 8 bighas and 15 biswas. A notification under section 6 of the Land Acquisition Act declaring that the lands were needed for public purpose, was issued. The Schedule to the notification was in the same form as it was originally published in the notification issued under section 4 and modified subsequently. It was recited in Para-3 of the notification that the plans of the land were available for inspection in the office of the Bhatinda District and of the Municipal Committee,Bhatinda. In view of the Municipality of Bhatinda the demarcation of the land according to the plan published with the notification under section 6 did not tally with the situation on the site. The matter was accordingly, referred to Public Works Department of the State and the Municipal Committee had resolved to reduce the width of the road which was originally intended to be 100 feet to 60 feet. Later on, Municipal Committee had resolved to abandon the scheme for it had appeared to the Municipal Committee that even in the reduced width of 60 feet, certain Municipal installations and the lands used for public purposes were likely to be included in that road width. The Government of Punjab, however, insisted that Municipal Committee should proceed with the acquisition. Therefore, it had directed the Collector to issue requisite notices and make award of compensation. The appellant had thereupon filed a writ petition in the High Court of Punjab which was dismissed in limine. In appeal while remanding the proceedings to the High Court, the Supreme Court has observed as under :-

"The Government of Punjab did not publish any plans, nor did they inform the owners of the lands in the locality to which the notification under section 4 of the Land Acquisition Act related, that plans were available for inspection at the office of the Collector; the owners of the lands were only informed that some parts of Khasra no.2030 belonging to the owners were required. There is no evidence on the record that the entire area of Khasra No.2030 was intended to be acquired. The notification did not, therefore, give due notice to the owners that their lands were intended to be notified for acquistion. In paragraph 2 of the petition it is also averred that there was no due publication of the notification in the locality by the Collector.

The pleas raised by the petitioners about

the infirmity in the notification and the proceedings for compulsory acquisition were serious."

14. From the above referred to paragraph, itis evident that Government of Punjab had not published any plans nor owners were informed that the plans were available for inspection at the Office of Collector. In the notification issued under section 4 of the Act, owners were merely informed that some parts of Khasra no.2030 were required. Under the circumstances, the Supreme Court has held that due notices to the owners that their lands were intended to be notified for acquisition, was not given. In our view,more than sufficient notice was given to the petitioners and others that part of survey no.1125 situated at Palanpur city is likely to be needed for public purpose. It cannot be said that notification issued under section 4 of the Act is vague in any manner so as to mislead any of the persons having interest in survey no.1125 situated in Palanpur city. Similarly,decision rendered in the case of Madhya Pradesh Housing Board vs. Mohd. Shafi and others, (1992) 2 SCC 168 is also of no avail to the petitioners for canvassing the point that notification issued under section 4 of the Act is liable to be quashed and set aside for its vagueness. In the case of Madhya Pradesh Housing Board (Supra) the Executive Engineer of the M.P. Housing Construction Division had addressed a letter to the Land Acquisition Officer stating that it was found that private land measuring 2.29 hectares situate near the bus stand in Mandsaur city, was "absolutely suitable for the construction of the buildings and shops under self-financing scheme" and had requested that the said land be acquired on priority basis. Accordingly, the Collector, Mandsaur had issued notification under section 4 of the Act. In the Schedule to the notification,the only description and particulars given about 2.298 hectares of the land proposed to be acquired were that same was situated in District Mandsaur, Tehsil Mandsaur, City/village Mandsaur. In the column for public purpose only 'residential' was mentioned. This notification was followed by a declaration under section 6(1) of the Act. In the Schedule to that declaration, khasra numbers of the proposed land with respective areas were provided and in column (2) requiring the mention of "public purpose" for which the land was required, it was stated for "housing scheme of Housing Board". In column (3), it was stated that "the plan of land may be inspected in the Office of the Collector". The respondent had filed a writ petition in the High Court, inter-alia, challenging the

notification under section 4 on the ground that it was vague and invalid for non-compliance with the mandatory requirements of the Act. The High Court had allowed the petition and while dismissing the SLP, the Supreme Court has held that absence of details of land under acquisition or locality in which the land is situated or absence of details of public purpose for intended acquisition vitiates notification as well as acquisition proceedings and merely stating the public purpose to be 'residential' is not enough. In our view, the facts which are noted by the Supreme Court in the reported decision are quite different from the facts pleaded in the petition and, therefore, the ratio laid down in the above-referred to decision cannot be made applicable to the facts of the present case. So far as the present notification under section 4 of the Act is concerned, all the necessary particulars of land have been given therein. The public purpose for which the land is likely to be needed is also specified clearly. Not only the survey number, but the locality is also specified in the notification issued under section 4 of the Act. This is not a case where particulars of land are not specified and only the area is specified. Under the circumstances, section 4 notification cannot be treated as illegal on the ground that it is vague and furnishes no details to the affected persons.

15. The submission that notification under section 4 of the Act has been issued malafide at the instance of Collector whose order under section 65 of the Bombay Land Revenue Code was set aside by the Government at the instance of the petitioners and, therefore, it should be set aside, has no substance. The lands in question are not acquired by the Collector, but by the appropriate Government i.e. State Government in exercise of powers conferred on it by President under Article 258(1) of the Act. The petitioners have not alleged any malafides on the part of the State Government. Merely because the order passed by the Collector under section 65 of the Bombay Land Revenue Code was set aside by the State Government at the instance of the petitioners, it would not be proper to jump to the conclusion that the Collector with bad intention had proposed to the State Government to acquire land out of survey no.1125 situated at Palanpur city. The record as produced by the petitioners indicates that relevant correspondence had taken place between the Deputy Collector of Palanpur and the State Government. It is true that on earlier two occasions the Government had not shown inclination to acquire part of survey no.1125 for the public purpose stated in the notification issued under section 4 of the

Act. However, there is no material on record to show that section 4 notification was issued by the State Government at the instance of the Collector of Palanpur. The allegations of malafides and improper motive on the part of those in power are frequently made and their frequency has increased in recent times. The allegations of the nature which have no foundation in fact are made in several of the cases which have come-up before this Court and other Courts and it is found that they have been made merely with a view to causing prejudice or in the hope that whether they have basis in fact or not, some of it atleast might stick. Consequently it has become duty of the Court to scrutinize them in cases where they have no foundation in fact. In this context, it may be noted that top administrators are often required to do acts which affect others adversely, but which are necessarsy in the execution of their duties. These acts may lend themselves to misconstruction and suspicion as to bonafides of their authority when full facts and surrounding circumstances are not known. The Court would therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party and when they are made against holder of an office which has a high responsibility in the administration. At this stage, it would be relevant to notice judgement of Apex Court in Gulam Mustfa and other vs. The State of Maharashtra and others, AIR 1977 SC 448. In the said case while negativing plea of malafides in relation to acquisition of land by Municipality, the Supreme Court has observed that the charge of malafides against public bodies and authorities is more easily made than made out and it is last refuge of a losing litigant. What is emphasised by the Apex Court is that what has to be established is mala fide exercise of power by the State Government- the acquiring authority. Having regard to the nature of facts pleaded by the petitioners, it is very difficult to conclude that acquisition is malafide in any manner. Even by filing additional affidavit-in-reply the respondent no.4 has pointed out that the Post and Telegram Department does not have any other land for construction of staff quarter at Palanpur and though there are nearly 200 staff members, not a single departmental quarter is available at Palanpur for any of them. Thus, it cannot be said that purpose for which the land is needed is either non-existent or figment of imagination of Collector. The Collector had nothing personal against any of the petitioners. Under the circumstances, it would not be just and proper for the Court to come to the conclusion that because of his personal prejudice against the petitioners, the then Collector Mr. Josh had motivated the Government to

acquire the lands of the petitioners. The notification under section 4 cannot be set aside on the ground that it is result of malafide exercise of power by the State Government - the acquiring body.

10. The plea that other suitable lands are available and, therefore, final declaration made under section 6 of the Act should be quashed cannot be accepted. After issuance of notification under section 4 of the Act, erstwhile owners as well as some of the petitioners had lodged objections under section 5A of the Act. Those objections were duly considered by the competent authority and thereafter report under section 5A(2) of the Act was made indicating suitability and adaptability of the lands for the purposes for which notification under section 4 of the Act was issued. The Government of Gujarat after going through the report submitted by the competent authority under section 5A(2) of the Act has decided to acquire plots out of survey no.1125, situated in Palanpur city and has, therefore, issued declaration under section 6 of the Act. In their objections which were submitted by the petitioners, the petitioners had pointed out alternative lands, but on appreciation of material placed before him, the competent authority recommended that part of survey no.1125 situated at Palanpur city was suitable for the purpose of construction of Telephone Exchange and staff quarters. The assessment of suitability of land proposed to be acquired for the concerned public purpose is initially for the Land Acquisition Officer to consider and thereafter the question whether the site in question is suitable or not for the concerned purpose has to be decided by the appropriate Government having regard to the material placed before it including report submitted under section 5A(2) of the Act. The Court while exercising jurisdiction under Article 226 of the Constitution cannot sit in appeal over such decision. What is required to be seen by the Court is whether provisions of law have been followed by the appropriate government or not before issuing notification under section 4 of the Act and making declaration under section 6 of the Act. At one point of time,at the instance of petitioners, question of alternative site was considered by the government and a long correspondence had ensued between the Deputy Collector, Collector and Government. However, ultimately the Government felt that part of survey no.1125 situated at Palanpur city was more suitable for construction of Telephone Exchange and staff quarter. Therefore, notification under section 4 was issued as well as declaration under section 6 was made. The plea that survey no.600 situated in Palanpur city was

recomended by the Divisional Engineer (Telegraphs) Palanpur for acquisition, but respondent no.2 had turned down said recommendation on the ground that the same was in residential zone and therefore, lands of the petitioners which can be used for residential purpose could not have been acquired, has no merits. As held earlier, it is for the State Government to decide at what particular place it is necessary to provide for Telephone Exchange and staff quarters. Besides, if any of the other plots were placed under acquisition, the respective owners thereof would also make similar complaint and contend that their lands should not be acquired because the lands belonging to the petitioners are not acquired or are more suitable for public purpose concerned. Even if there are other lands available in the vicinity, it is for the State Government to decide as to which land should be acquired, of course, based on consideration of relevant materials. It is not open to the Court to sit in appeal over the decision of the State Government in this behalf and acquisition proceedings cannot be quashed on ground that other suitable lands are available for the public purpose or that hostile treatment is meted out to the petitioners by acquiring their lands. In Bharat Singh and others vs. State of Haryana and others, A.I.R. 1988 S.C. 2181, acquisition proceedings were, inter-alia, challenged on the ground that the petitioners were discriminated, inasmuch as land of others in the village was not acquired. While negativing said plea, the Supreme Court hasheld as under in Para-17 of the judgment:-

> "Lastly, it is argued by Mr. Goburdhan for the writ petitioners that the petitioners have been discriminated inasmuch as the land of other persons in the village has not been acquired. This contention is without any substance whatsoever. The Government will acquire only that amount of land which is necessary and suitable for the public purpose in question. The land belonging to the petitioners have been acquired obviously considering the same as suitable for the public purpose. The petitioners cannot complain of any discrimination because the land of other persons has not been acquired by the Government. The contention is devoid of any merit whatsoever."

Having regard to the principle enunciated by the Supreme Court in abovereferred to decision, acquisition proceedings cannot be quashed on ground that other

suitable lands are available for the public purpose concerned and petitioners are discriminated.

16. The last submission that public purpose for which notification under section 4 was issued and declaration under section 6 was made does not subsists and, therefore, notification and declaration should be set aside,has also no substance. As noted earlier, Mr. A.K.Patel, S.D.E (Admn.) has filed affidavit-in-reply on behalf of the respondents on October 30, 1996, wherein it is clearly stated that the department does not have any other land for construction of staff quarters at Palanpur and staff members are without quarters at Palanpur. The need to acquire 10117 sq.mts. of survey no.1125 is reiterated on behalf of respondent no.4 in para-3 of the affidavit which is filed on October 30,1996. In the said affidavit, it is stressed that though the Telephone Exchange is at present stationed in Joravar Palace Campus, need to have many other electronic telephone exchanges and/or multi-exchanges is felt and 5000 sq.mts. land is needed for storage etc. Apart from the existing need of respondent no.4, the land acquired for a public purpose can be used for another public purpose also. The record does not indicate that the public purpose for which notification was issued under section 4 of the Act does not subsist as on today. Under the circumstances, notification issued under section 4 of the Act cannot be quashed on the ground that public purpose for which it was issued does not subsist as on today.

Except the above referred to contentions, no other contention has been urged by the learned Counsel for the petitioners in support of the petitions. As we do not find substance in any of the contentions urged on behalf of the petitioners, the petitions are liable to be rejected.

For the foregoing reasons, all the three petitions fail and are dismissed. Rule issued in each petition is discharged, with no order as to costs. Ad-interim relief granted earlier in each of the petitions, is hereby vacated.

17. At this stage, learned Counsel for the petitioners has prayed that operation of the order passed by the High Court be kept in abeyance for twelve weeks so as to enable the petitioners to approach higher forum. In this case, notification under section 4 was issued on March 18,1983, but proceedings have been stalled at the instance of the petitioners since October 21,1986. Respondent no.4 has emphasised need to acquire the land

in question for construction of Telephone Exchange and staff quarters in the additional affidavit which is filed on October 30, 1996. Having regard to the facts and circumstances of the case, we are of the opinion that operation of the order passed by the High Court cannot be kept in abeyance any more. Under the circumstances, prayer to keep operation of the order in abeyance to enable the petitioners to approach higher forum is hereby rejected.

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Patel